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REGULATORY **BELLSOUTH**

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Nashville, Tennessee 37201-3300

Guy M. Hicks
General Counsel
OFFICE OF THE
EXECUTIVE SECRETARY

February 25, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service
Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee*
Docket No. 98-00559

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s
Response to Motion to Compel of SECCA, NEXTLINK, and e.spire. Copies of the enclosed are
being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH/jem

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

***In re: Proceeding for the Purpose of Addressing Competitive Effects of
Contract Service Arrangements Filed by BellSouth
Telecommunications, Inc. in Tennessee***

Docket 98-00559

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO MOTION TO COMPEL OF SECCA, NEXTLINK, AND e.spire**

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this response in opposition to the Motion to Compel filed by NEXTLINK Tennessee, Inc. ("NEXTLINK"), e.spire Communications, Inc. ("e.spire"), and the Southeast Competitive Carriers Association ("SECCA") (collectively referred to as "Intervenors"). The Intervenors' motion centers on BellSouth's responses to four discovery requests, copies of which are attached as Exhibit 1. BellSouth answered two of the discovery requests by making the documents containing the requested information available for review by the Intervenors. However, rather than reviewing these documents, the Intervenors want BellSouth to do additional work or to produce the documents somewhere other than where they are maintained in the ordinary course and scope of business, neither of which BellSouth is required to do. BellSouth objected to the other two discovery requests on relevancy grounds because they seek information concerning property management agreements in other BellSouth states and matters raised in Docket 97-01105 – issues that the Prehearing Officer and the Tennessee Regulatory Authority ("Authority") have already determined are not relevant to this proceeding. Accordingly, the Intervenors' Motion to Compel should be denied.

II. DISCUSSION

A. First Discovery Request No. 4(d)

The Intervenors' First Discovery Request No. 4 asked that BellSouth "identify every CSA entered into since January 1, 1994 to the present, including ...(d) the differences in the rates, terms, and conditions for the telecommunications services provided under the CSA and the rates, terms, and conditions for those same services as set forth in your approved tariffs in Tennessee." BellSouth responded to Item No. 4(d) as follows:

The information responsive to Item d for service-specific CSAs can be obtained by comparing the rates, terms and conditions specified in each CSA with the rates, terms and conditions specified in the BellSouth tariff for the particular services included in each CSA. Discounts for Volume and Term CSAs (denoted "V&T" on the attachment) are expressly stated in the tariff filing for each CSA (GSST Section A5.6 and Private Line Services Tariff B5.7) as well as in the CSA themselves. BellSouth's CSAs have been made available for inspection by counsel for the parties pursuant to the Protective Order entered by the Authority in this proceeding. BellSouth's tariffs are a matter of public record and are available for inspection at the Tennessee Regulatory Authority or BellSouth's website: <http://cpr.bst.BellSouth.com/index2.html>.

BellSouth responded fully to this discovery request, and producing documents in response to an interrogatory is completely consistent with Rule 33.03 of the Tennessee Rules of Civil Procedure. The answer to the Intervenors' request for a comparison of the rates, terms and conditions between the CSAs and BellSouth's tariffs "may be derived or ascertained" from the documents BellSouth has made available, and "the burden of deriving or ascertaining" this information is substantially the same for the Intervenors as it is for BellSouth. While the Intervenors apparently want BellSouth to do the work they readily can do themselves, BellSouth is not required to do so. *See* T.R.C.P. 33.03.

The Intervenors' assertion that "BellSouth itself must have prepared such an analysis for each CSA before BellSouth offered the CSA to a customer" is not correct. Intervenors' Motion

at 1, n.1. Although BellSouth prepares an analysis for each service-specific CSA that compares the difference in the rates that would apply under a CSA as opposed to under the tariff (which is filed with the Authority), the Intervenor's request was not limited to rates; rather it covered any difference in the "rates, terms, and conditions" between the CSA and the tariff. BellSouth does not prepare this type of analysis, since any differences in terms and conditions are reflected in the CSAs themselves, which BellSouth has made available for the review.

Equally incorrect is the Intervenor's claim that they "will not, as a practical matter, be able to determine how much of a discount BellSouth is offering" Intervenor's Motion at 2. Discounts for Volume and Term CSAs are specifically stated in the tariff filing for each CSA as well as in the CSAs themselves, and there is nothing "complex" about determining this discount, notwithstanding the Intervenor's claims to the contrary. With respect to service-specific CSAs, the discount can readily be determined from the analysis BellSouth prepares and files with the Authority for each CSA. This analysis is contained in the documents BellSouth has made available for inspection, which the Intervenor has not bothered to review.

B. Second Discovery Request No. 2

In their Second Discovery Request No. 2, the Intervenor requested, for each CSA filed by BellSouth since January 1, 1995, that BellSouth "identify each individual service element that is provided below its long run incremental cost as computed in the cost studies used by BellSouth to support the CSA filing." BellSouth objected to this request on grounds that the information requested is not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. BellSouth's objection is valid and should be sustained.

Intervenors do not dispute that the issue of whether each individual service element provided under a CSA is above or below its long run incremental cost is the same issue raised by the Consumer Advocate Division (“CAD”) in Docket No. 97-01105. Although Intervenors claim that the same issue also “must be fully explored in this proceeding,” the Authority held otherwise when it refused to consolidate Docket No. 97-01105 into this proceeding. The CAD specifically made this request for consolidation, which the Prehearing Officer recommended that the Authority deny in his January 15, 1999 Report and Recommendation. The Authority adopted the Prehearing Officer’s Report and Recommendation on January 19, 1999. The Intervenors did not object to this decision, nor did they bother to seek reconsideration of this issue. Accordingly, the Intervenors’ objection that they “must have access to whatever information has been provided in Docket No. 97-01105” conveniently ignores the Authority’s prior ruling to the contrary.

C. First Discovery Request No. 2

The Intervenors also disregard the Authority’s prior ruling in seeking to compel BellSouth to produce “property management agreements” offered by BellSouth “in any BellSouth state.” BellSouth objected to this request on grounds that such information is irrelevant, and this objection is completely consistent with the January 15, 1999 Report and Recommendation of the Prehearing Officer, which expressly found that property management contracts are “irrelevant to the scope of this proceeding....” The Authority agreed when it adopted the Prehearing Officer’s Report and Recommendation. Again, the Intervenors did not object to the Authority’s decision, nor did they seek reconsideration on this issue. The Intervenors should not be allowed under the guise of discovery to revisit an issue that has already been resolved against them by the Authority.

D. Second Discovery Request No. 5

In Second Discovery Request No. 5, the Intervenor asked that, for each CSA submitted to the Authority in 1998, BellSouth “provide the service-specific cost along with the forecasted demand data used by [BellSouth] to determine [BellSouth’s] total cost, both recurring and nonrecurring.” The Intervenor also asked that BellSouth provide “for each CSA described above all documents concerning that contract by Marketing/Contract Management.” The Intervenor’s Motion to Compel misstates both the discovery request and BellSouth’s response.

BellSouth’s response to the Intervenor’s request was two-fold. With respect to the information concerning service-specific costs and forecasted demand, BellSouth responded that this information was contained in documents that were available for inspection at BellSouth’s offices in Nashville. The Intervenor’s claim that BellSouth offered to make these documents available for inspection “at BellSouth’s Atlanta offices” is completely untrue. Intervenor’s Motion at 4. Thus, the documents necessary to determine whether the CSAs are consistent with the Authority’s rules are “available in Tennessee, not Georgia.”

However, the Intervenor conveniently ignore the second part of their request, which sought documents maintained by “Marketing/Contract Management.” This group is located in Atlanta, and the requested documents are maintained by BellSouth in Atlanta. BellSouth has no obligation to produce such documents in Nashville. *See* T.R.C.P. 34.02 (“A party who produces documents for inspection shall produce them as they are kept in the usual course of business....”). As several commentators have observed:

Business records should usually be examined at the place where they are kept and at reasonable hours. To grant an order requiring them to be produced at a distant and inconvenient place, with resultant disruption of business, may be an abuse of judicial discretion.

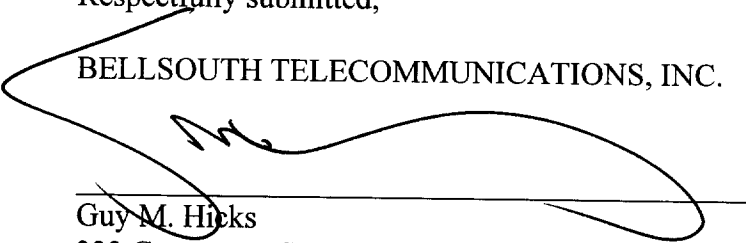
Wright Miller and Marcus, 8A Federal Practice and Procedure, § 2214, at 442-443 (1994) (footnotes omitted) (citations omitted). To the extent the Intervenor is interested in reviewing documents that are kept in Atlanta, the Intervenor should review them there, as BellSouth has no obligation to disrupt its business by producing them in Nashville.

III. CONCLUSION

For the foregoing reasons, SECCA, NEXTLINK, and e.spire's Motion to Compel should be denied.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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EXHIBIT 1

REQUEST: Please identify every CSA entered into since January 1, 1994 to the present, including:

- (a) the effective date of the CSA;
- (b) the terms of the CSA;
- (c) the telecommunication services provided under the CSA; and
- (d) the differences in the rates, terms, and conditions for the telecommunications services provided under the CSA and the rates, terms, and conditions for those same services as set forth in your approved tariffs in Tennessee.

RESPONSE: The information responsive to Items a, b, and c is attached. The information responsive to Item d for service-specific CSAs can be obtained by comparing the rates, terms and conditions specified in each CSA with the rates, terms and conditions specified in the BellSouth tariff for the particular services included in each CSA. Discounts for Volume and Term CSAs (denoted "V&T" on the attachment) are explicitly stated in the tariff filing for each CSA (GSST Section A5.6 and Private Line Services Tariff B5.7) as well in the CSAs themselves. BellSouth's CSAs have been made available for inspection by counsel for the parties pursuant to the Protective Order entered by the Authority in this proceeding. BellSouth's tariffs are a matter of public record and are available for inspection at the Tennessee Regulatory Authority or BellSouth's website: <http://cpr.bst.bellsouth.com/index2.html>.

BellSouth Telecommunications, Inc.
TRA Docket 98-00559
NEXTLINK, SECCA, and ACSI
Second Interrogatories
October 21, 1998
Item No. 2
Page 1

REQUEST: For each Contract Service Arrangements (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995, identify each individual service element that is provided below its long run incremental costs as computed in the cost studies used by BellSouth to support the CSA filings.

RESPONSE: BellSouth objects to this Interrogatory on grounds that the information requested is not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. The issue to which this Interrogatory is directed – whether or not the price of services provided under BellSouth's CSAs is above the incremental cost to providing such service – has been raised by the Consumer Advocate Division ("CAD") in Docket 97-01105, and BellSouth has already provided the CAD extensive information in response to discovery by the CAD in that docket. The Authority has not granted the CAD's request to consolidate these dockets, and NEXTLINK, SECCA, and e.spire should not be permitted to do so unilaterally under the guise of discovery.

BellSouth Telecommunications, Inc.
TRA Docket 98-00559
SECCA, NEXTLINK and e.spire
First Interrogatories
September 18, 1998
Item No. 2
Page 1

REQUEST: Does BellSouth offer a properly management agreement to property managers in any BellSouth state. If so, provide a copy of a typical such agreement. If not, explain why BellSouth is no longer offering such agreements.

RESPONSE: BellSouth objects to this Interrogatory on grounds that it requests information concerning contracts other than CSAs, which is not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. While CSAs may be relevant to this proceeding, "property management agreements" are not.

BellSouth Telecommunications, Inc.
TRA Docket 98-00559
NEXTLINK, SECCA, and ACSI
Second Interrogatories
October 21, 1998
Item No. 5
Page 1

REQUEST: For each CSA submitted to the TRA in 1998, provide the service-specific costs along with the forecasted demand data used by BST to determine BST total costs, both recurring and non-recurring for the CSA:

- a) Provide also for each CSA described above all documents concerning that contract by Marketing/Contract Management.
- b) The above terms are defined as used by BST in BST response to Item No. 3 of the First Data Requests of Time Warner submitted in TRA Docket 98-00559.

RESPONSE: The information responsive to the request for service-specific costs and forecasted demand is contained in documents that are available for inspection at the offices of BellSouth Telecommunications, Inc., 333 Commerce Street, subject to the Protective Order entered by the Authority in this proceeding. The requested documents from "Marketing/Contract Management" are available for inspection at the offices of BellSouth Systems Marketing Department – Contracts and Field Support, 675 West Peachtree Street, Atlanta, Georgia, subject to the Protective Order.

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 1999, a copy of the foregoing document was served on the parties of record via facsimile, overnight, or US Mail, postage prepaid:

Richard Collier, Esquire
Tennessee Regulatory Authority
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Henry Walker, Esquire
Boult, Cummings, et al.
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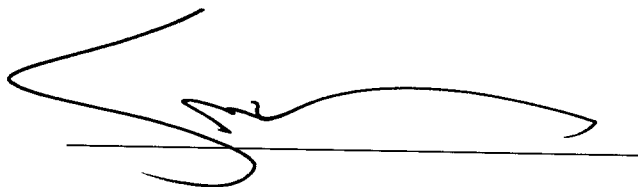
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A handwritten signature in black ink, appearing to be 'J. Walker', written over a horizontal line.